HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1500 OF 2005

Vivek Enclave Co-operative Housing Society Ltd. ....Petitioner

Versus.

Municipal Corporation of Greater Bombay & Ors. .....Respondents.

Smt. Sumedha Rao for the petitioner.
Smt. Aruna Salva for respondent-1 to 3.
Shri T.N. Subramaniam i/b. Bankim Desai & Company for respondent-4.
Shri Mihir Desai for respondent-5.

CORAM: Smt. Ranjana P. Desai, & Abhay S. Oka, JJ.

DATE : December 21, 2005.

P.C.

1. The petitioner has inter alia prayed in this petition that a direction be issued to respondent -2 i.e. the Executive Engineer of the Mumbai Municipal Corporation to issue "Stop Work" notice for the construction/alterations being carried out in shop Nos.1,2 and 3 in ’A’ wing of the petitioner’s building.

2. We have heard learned counsel for the parties. We have also perused the affidavit of M.B. Godbole Sub Divisional Engineer of the respondent No.1-Corporation.

3. On 22nd January, 2003, on Writ Petition No.2777 of 2002 filed by the petitioners making similar grievance, this Court passed following order.

> "We direct the concerned officer of the Corporation to investigate into allegations made by the Petitioners and after hearing both sides pass appropriate orders in accordance with law within three months."

4. This order has not been complied with by the respondent-Corporation till date. Affidavit of Shri Godbole indicates that the respondent corporation has issued notice dated 23rd July, 2005 under section 347 of the Mumbai Municipal Corporation Act, to the occupiers of the shops. The respondent-Corporation will have to pursue the said notice and take it to its logical conclusion. We are distressed to note that though specific directions were given in the order dated 12th January, 2003, respondent - Corporation has not complied with the said directions till date. Affidavits of Shri Godbole and affidavit of Shri Pai, Assistant Commissioner of the respondent corporation does not offer satisfactory explanation for this lapse. In the circumstances, in our opinion, following order will meet the ends of justice.

a. Respondent-Corporation shall pursue its notice under section 347 of the Mumbai Municipal Corporation dated 23rd July, 2005 and take appropriate action in accordance with law, if found necessary.

b. The present petition will be treated as

a representation made by the petitioners and the respondent - Corporation shall consider it and take appropriate action in accordance with law, if found necessary. The respondent corporation shall ensure the compliance of order dated 22nd January, 2003, passed in Writ Petition No.2777 of 2002.

c. The entire exercise should be completed within a period of six weeks from today.

d. Corporation shall intimate the order to the concerned parties.

e. Petition disposed of.

(SMT. RANJANA P. DESAI, J.)

(ABHAY S. OKA, J.)